

**UNITED STATES DEPARTMENT OF COMMERCE****Patent and Trademark Office**

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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.
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08/813, 950 03/03/97 ASSMUS

M 583-252-0-FW

EXAMINER

IM62/0629

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SHEET NUMBER PAPER NUMBER

32

1712
DATE MAILED:

06/29/99

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner of Patents and Trademarks

Advisory Action	Application No. 08/813,950	Applicant(s) Assmus et al.
	Examiner Robert Sellers	Group Art Unit 1712

THE PERIOD FOR RESPONSE: [check only a) or b)]

- a) expires five months from the mailing date of the final rejection.
- b) expires either three months from the mailing date of the final rejection, or on the mailing date of this Advisory Action, whichever is later. In no event, however, will the statutory period for the response expire later than six months from the date of the final rejection.

Any extension of time must be obtained by filing a petition under 37 CFR 1.136(a), the proposed response and the appropriate fee. The date on which the response, the petition, and the fee have been filed is the date of the response and also the date for the purposes of determining the period of extension and the corresponding amount of the fee. Any extension fee pursuant to 37 CFR 1.17 will be calculated from the date of the originally set shortened statutory period for response or as set forth in b) above.

Appellant's Brief is due two months from the date of the Notice of Appeal filed on _____ (or within any period for response set forth above, whichever is later). See 37 CFR 1.191(d) and 37 CFR 1.192(a).

Applicant's response to the final rejection, filed on Jun 21, 1999 has been considered with the following effect, but is NOT deemed to place the application in condition for allowance:

The proposed amendment(s):

- will be entered upon filing of a Notice of Appeal and an Appeal Brief.
- will not be entered because:
 - they raise new issues that would require further consideration and/or search. (See note below).
 - they raise the issue of new matter. (See note below).
 - they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal.
 - they present additional claims without cancelling a corresponding number of finally rejected claims.

NOTE: _____

Applicant's response has overcome the following rejection(s):

Newly proposed or amended claims _____ would be allowable if submitted in a separate, timely filed amendment cancelling the non-allowable claims.

The affidavit, exhibit or request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See attachment.

The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.

For purposes of Appeal, the status of the claims is as follows (see attached written explanation, if any):

Claims allowed: None

Claims objected to: None

Claims rejected: 17-21

The proposed drawing correction filed on _____ has has not been approved by the Examiner.

Note the attached Information Disclosure Statement(s), PTO-1449, Paper No(s). _____.

Other


ROBERT SELLERS
PRIMARY EXAMINER
ART UNIT 1712

Art Unit: 1712

The evidence presented in the declaration filed June 21, 1999 is inconclusive since there is no comparison involving melts at the lower, midrange and upper limits of the claimed melt temperature range of from 100-150°C to compare with the results at the prior art temperature of 65°C.

The results are based on visual observations which are a function of the observer and cannot be verified in the absence of an empirical basis for the determination melt appearance such as microphotographs.

The showings are not commensurate in scope with the claims because the testing of a single type of flow improver (i.e. glycerol monostearate) does not confer patentability to such diverse classes of flow improvers as the fatty acids, sugars, waxes, fatty alcohols, polyethylene glycols, fatty acid-fatty alcohol esters, polyethylene glycol fatty acid esters and polyethylene glycol fatty alcohol ethers listed on pages 13-14 of the specification.

Any inquiry concerning this communication should be directed to Robert Sellers at telephone number (703) 308-2399 (Fax No. (703) 305-3599).

rs

6/28/99

ROBERT E. SELLERS
PRIMARY EXAMINER
GROUP 150